

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Consumer and Governmental Affairs)	CG Docket No. 18-152
Bureau Seeks Comment on Interpretation)	
of the Telephone Consumer Protection Act)	
in Light of the D.C. Circuit's ACA)	
International Decision)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act)	
)	
To: The Commission		

**REPLY COMMENTS OF THE
ALARM INDUSTRY COMMUNICATIONS COMMITTEE**

The Alarm Industry Communications Committee ("AICC"), on behalf of its members,¹ hereby files reply comments on the Commission's Public Notice dated May 14, 2018,² seeking comment on how to interpret certain provisions of the Telephone Consumer Protection Act ("TCPA") in the wake of the recent decision of the U.S. Court of Appeals for the District of

¹ The Monitoring Association (TMA) (formerly known as Central Station Alarm Association), Electronic Security Association (ESA), Security Industry Association (SIA), the National Public Safety Telecommunications Council, Ackerman Security, ADS, ADT, AES- IntelliNet, AFA Protective Systems, Alarm.com, Alarm Detection Systems, ASG Security, Axis Communications, Bay Alarm, Bosch Security Systems, COPS Monitoring, CRN Wireless, LLC, DGA Security, Digital Monitoring Products, Digital Security Control, FM Approvals, Honeywell Security, Inovonics, Interlogix, Intertek Testing, iPDatatel, Napco Security, NetOne, Inc., Nortek, Protection One, Rapid Response Monitoring, Security Central NC, Select Security/Security Partners, Stanley Security, Supreme Security Systems, Inc., Telular Corp., Tyco Integrated Security, Tyco Security Products, Underwriters Laboratories, Universal Atlantic Systems, Vector Security, Inc., Vivint, and Wayne Alarm.

² *Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's ACA International Decision*, Public Notice, DA 18-493, CG Docket No. 18-152, 02-278, released May 14, 2018.

Columbia in *ACA International v. FCC*. In determining whether the TCPA applies to a given automated call, the Commission has succinctly expressed the analytical criteria as, “ensur[ing] consumers will get the messages they want, indeed that are often critical, without undermining the TCPA's goal of protecting consumers from unwanted messages.”³ AICC submits that this is the guiding principle the Commission should focus on as it interprets the TCPA. Accordingly, AICC urges the Commission to reject a broad interpretation of the definition of “autodialer,” (“ADTS”) and agrees that the term “called party” should refer to the party the caller intends to reach.

I. Alarm Industry Contacts are Beneficial to Customers

Modern security systems monitor a number of critical functions for customers and send alarm notifications to the monitoring station. These notifications include system alarm triggers, such as a breach of a door or window sensor, notification that a motion detector or glass break has been triggered, or that a smoke or carbon monoxide sensor has been triggered. When a monitoring company receives notification of a smoke or fire alarm, emergency personnel are dispatched immediately and the monitoring station attempts to contact the customer. In order to prevent dispatching police to a “false alarm,” alarm monitoring stations will try to confirm the existence of a true emergency before dispatching emergency personnel. Alarm customers provide contact numbers, both their own and the numbers of others, for this purpose.

Alarm systems also may send notifications when devices are added or deleted; and system trouble notifications, such as a device going offline, a device with low battery power, a system AC power failure, or a user locked out after failed sign-in attempts. These notifications

³ *In re: Blackboard, Inc. Petition for Declaratory Ruling, et al.*, FCC 16-88, CG Docket No. 02-278, released August 4, 2016 at ¶18.

also are critical to the safety of the subscriber. For example, a device going offline may be because a home intruder has removed the alarm device. A signal that a user is locked out after failed attempts to sign in may be because an unauthorized person and/or intruder is trying to sign in to the system. Without power, the system will not work as desired by the customer to protect life and property. When these types of signals are received by the alarm monitoring station, the monitoring station will contact the customer. If the customer cannot be contacted, the alarm monitoring station will contact the alternative contact person(s) provided by the customer.

Besides these emergency communications, alarm companies also place automated calls that are closely related to the purchased alarm service, and are the type of communications customers expect to receive by providing their cell phone number to an alarm company. Non-emergency automated calls may be placed to contact that customer about their account and alarm system status and to verify installation/maintenance appointments. Other important notifications that can best be quickly distributed to alarm subscribers by placing a call and/or text message include: the need for an equipment upgrade; an equipment recall; alerts regarding a system security risk (e.g., the need for a software upgrade to the customer's DVR or other equipment that has been identified as being a breach threat); alerts of suspicious activity in a particular market (e.g., someone is knocking on doors soliciting customers pretending they are from the alarm company); or proactive security alerts (e.g., in an area that has been subject to recent home invasions).

As the National Consumer Law Center ("NCLC") discusses in its comments, "very few" of the calls in the Alerts and Reminders category – which would include the types of calls described above – are blocked by users of the YouMail Call Blocker app, despite the fact that

they make up nearly 30% of the automated calls handled by the app in recent months.⁴

Accordingly, AICC urges the Commission to interpret the provisions of the TCPA on which it seeks comment so as to ensure that consumers will get these types of messages – which they demonstrably desire.

II. The Term “Autodialer” Should Be Strictly Construed

AICC joins ADT, the U.S. Chamber Institute, and others in urging the Commission to adopt “a construction of what constitutes an ATDS that conforms to the statutory language and congressional intent, as guided by the D.C. Circuit.”⁵ Specifically, AICC agrees with those commenters proposing that to be an ATDS, (i) equipment must use a random or sequential number generator to store or produce numbers and dial those numbers without human intervention and (ii) only calls made using actual ATDS capabilities are subject to the TCPA’s restrictions.⁶ This represents a common-sense approach that closely hews to the statutory language of the TCPA, and more directly addresses the Commission’s mandate to ensure consumers are protected from calls they do not want while still receiving calls they do want.

As ADT points out, “[b]y expanding the ATDS definition to include equipment that dials numbers from lists – predictive dialers—the Commission turned the TCPA into a weapon against legitimate companies using efficient dialing equipment to contact their own customers and other specific consumers.”⁷ AICC’s members’ call lists are comprised of telephone numbers that have been provided by their customers to the member in connection with their security service. They

⁴ Comments of National Consumer Law Center, CG Docket Nos. 02-278; 18-152, filed June 13, 2018 at p 6.

⁵ Comments of U.S. Chamber Institute for Legal Reform, CG Docket Nos. 02-278; 18-152, filed June 13, 2018 at 11-12.

⁶ *Id.*

⁷ Comments of ADT, LLC d/b/a ADT Security Services, CG Docket Nos. 02-278; 18-152, filed June 13, 2018 at 12.

are not the type of “indiscriminately dialed ‘cold calls’” that ADT notes were Congress’ primary concern in adopting the TCPA in the first place.⁸

AICC also agrees with commenters that argue that in order to be considered an ADTS, “the requisite functions of generating and dialing random or sequential numbers must actually be used in making or initiating a call.”⁹ In rejecting the Commission’s previous interpretation, the D.C. Circuit Court correctly recognized that “[t]he Commission’s ruling endorsed a broad understanding under which the statute prohibits any calls made from a device with the capacity to function as an autodialer, regardless of whether autodialer features are used to make a call.”¹⁰ The Court went on to state that interpreting the definition to require that the equipment must actually be used as an autodialer to make calls before a TCPA violation “would substantially diminish the practical significance of the Commission’s expansive understanding of ‘capacity’ in the autodialer definition”¹¹ – suggesting the Court may not have rejected that understanding if this limitation were included.

Several commenters argue for the adoption of a broad definition of ADTS in order to maximize the effectiveness of the TCPA.¹² However, a narrow definition of ADTS does not eliminate the TCPA’s ability to protect consumers. Possible ways to reduce or prevent unwanted calls even under a narrow definition of ADTS include a clear statement to the customer about the procedures to send alerts and reminders, which the customer would agree to when he or she signs a service agreement. And, the ability to easily revoke consent, if the customer no longer wishes to receive alerts and reminders.

⁸ Comments of ADT at p. 12.

⁹ *Id.* at 15.

¹⁰ *ACA Int’l v. FCC*, 885 F.3d 687, 705 (DC Cir. 2018).

¹¹ *Id.* at 705-706.

¹² Comments of National Consumer Law Center at 19-23.

AICC again notes that the purpose of the TCPA is to balance “[i]ndividuals’ privacy rights, public safety interests, and commercial freedoms of speech and trade . . . in a way that protects the privacy of individuals and permits legitimate telemarketing practices.”¹³ As clearly demonstrated by the record in these proceedings, and by the Court’s determination in *ACA International v. FCC*, the TCPA has long been interpreted too broadly.

III. The Term “Called Party” Should refer to the Party Intended to be Reached

AICC also agrees with those commenters supporting an interpretation of the term “called party” to mean the person intended to receive the call. The Court struck down the whole of the Commission’s 2015 approach in this regard because it recognized the incompatible result: without the one-call only safe harbor, the Commission’s interpretation of “called party” would make a caller “strictly liable for all calls made to the reassigned number, even if she has no knowledge of the reassignment” – a result the Commission expressly declined to require in the same 2015 Order.¹⁴ Instead, as ADT points out, “[d]efining “called party” as the “intended recipient” also best comports with the Commission’s determination, which it should uphold, that a caller may reasonably rely on the prior consent of the party that provided the telephone number to contact.”¹⁵

IV. Conclusion

In light of the forgoing, AICC urges the Commission adopt a narrow interpretation of the definition of “autodialer.” Additionally, AICC supports the interpretation the term “called party” should refer to the party the caller intends to reach. To the extent concerns exist about overly

¹³ P.L. 102-243, §2(9).

¹⁴ *ACA Int’l v. FCC*, 885 F.3d at 706; Comments of National Consumer Law Center at p 14.

¹⁵ Comments of ADT at p 19.

narrow interpretations, AICC respectfully submits that there are other ways to reduce or prevent unwanted calls, such as clear statements to the customer about the procedures to send alerts and reminders, and the ability to easily revoke consent.

Respectfully submitted,

**ALARM INDUSTRY COMMUNICATIONS
COMMITTEE**

A handwritten signature in cursive script that reads "Louis T. Fiore".

Louis T. Fiore
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